

APPEAL NO. 010471

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 1, 2001. The hearing officer determined that the appellant (claimant) had not sustained a compensable injury on _____ (all dates are 2000 unless otherwise noted) and that the claimant did not have disability.

The claimant appealed, contending that it is undisputed that an incident took place and that the incident "according to the law of physics" caused the claimant's injury and disability. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed as a prep cook in a fast food restaurant. It is relatively undisputed that on _____, the claimant was accidentally bumped or hit by the owner's brother, who was walking or running through the restaurant. At issue is how hard the claimant was hit. A coworker who witnessed the incident said that the claimant was "barely bumped" and that the claimant told the man to "watch out." The claimant asserts that she was hit with "such force, that she was lifted off the ground by the impact, then smashed against the metal fryer." Although the owner and the manager were aware of the bumping incident, evidence of whether an injury was sustained is disputed. The claimant finished her shift and continued working her regular shifts until August 31, when the claimant and another coworker were involved in a fight. The magnitude of that fight is in dispute.

The claimant was seen at the (clinic) on September 2, where the initial tentative diagnosis was cervical, thoracic, and lumbar strain, sciatica, and a "left trapezius injury." The claimant received more treatment at the clinic and an MRI performed on November 1 purports to show a "10.0 mm posterior herniation of the nucleus pulposus at the L5-S1 level with encroachment on the thecal sac and on the right S1 nerve root."

The employer's owner testified that after the fight on August 31, at about 11:30 a.m., the claimant continued to stay at the restaurant until she left at about 1:30 p.m. He testified that although he was aware of the bumping incident on _____, and the fight on August 31, he was unaware that the claimant was alleging an injury until she came to pick up her last check on September 4.

The hearing officer found that the claimant had not injured any part of her body "as a result of being bumped by a coworker" and commented that the claimant was "credible that the incident occurred, but is not credible that any injury was caused." The claimant contends that because the man that bumped her was much larger than she was, she must have been injured.

The evidence is in conflict. The hearing officer could, and clearly did, believe that the claimant only sustained a minor bump without any injury. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Robert W. Potts
Appeals Judge